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Board of Vocational Nursing
and Psychiatric Technicians

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BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. VN-2008-2331

BRET ALAN BARKER
1018 Hillcrest Road
Hollister, CA 95023

A C C U S A T I O N

Vocational Nurse License No. 223609
(Expired)

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about October 19, 2006, the Board of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License Number 223609 to Bret Alan Barker (Respondent). The Vocational Nurse License expired on April 30, 2008, and has not been renewed.

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1 in subdivisions (a) and (b) of this section, in which event the record of the conviction is
2 conclusive evidence thereof.”

3 . . .

4 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
5 revoke a license when it finds that the licensee has been convicted of a crime substantially related
6 to the qualifications, functions or duties of a licensed vocational nurse.

7 9. Section 492 of the Code states that, “notwithstanding any other provision of law,
8 successful completion of any diversion program under the Penal Code, or successful completion
9 of an alcohol and drug problem assessment program under Article 5 (commencing with section
10 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency
11 established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any
12 initiative act referred to in that division, from taking disciplinary action against a licensee or from
13 denying a license for professional misconduct, notwithstanding that evidence of that misconduct
14 may be recorded in a record pertaining to an arrest.”

15 “This section shall not be construed to apply to any drug diversion program operated by any
16 agency established under Division 2 (commencing with Section 500) of this Code, or any
17 initiative act referred to in that division.”

18 10. Section 493 of the Code states that, “notwithstanding any other provision of law, in a
19 proceeding conducted by a board within the department pursuant to law to deny an application for
20 a license or to suspend or revoke a license or otherwise take disciplinary action against a person
21 who holds a license, upon the ground that the applicant or the licensee has been convicted of a
22 crime substantially related to the qualifications, functions, and duties of the licensee in question,
23 the record of conviction of the crime shall be conclusive evidence of the fact that the conviction
24 occurred, but only of that fact, and the board may inquire into the circumstances surrounding the
25 commission of the crime in order to fix the degree of discipline or to determine if the conviction
26 is substantially related to the qualifications, functions, and duties of the licensee in question.

27 “As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
28 'registration.'”

1 REGULATORY PROVISIONS

2 11. California Code of Regulations, Title 16, section 2521, states in pertinent part that,
3 for the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5
4 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be
5 considered to be substantially related to the qualifications, functions or duties of a licensed
6 vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed
7 vocational nurse to perform the functions authorized by his license in a manner consistent with
8 the public health, safety, or welfare.

9 12. California Code of Regulations, Title 16, section 2518.6(b)(4), states that a licensed
10 vocational nurse shall adhere to standards of the profession and shall incorporate ethical and
11 behavioral standards of professional practice which include but are not limited to abstaining from
12 chemical/substance abuse.

13 COSTS

14 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
15 administrative law judge to direct a licensee found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 FIRST CAUSE FOR DISCIPLINE

19 (Substantially Related Convictions)

20 14. Respondent Bret Alan Barker's Vocational Nursing License is subject to discipline
21 under Code sections 2875, 2878(a), 2878.5(b), 2878.5(c) and section 490, pursuant to Code
22 section 493 as defined in Title 16, California Code of Regulations, section 2521, and pursuant to
23 California Code of Regulations, Title 16, section 2518.6(b)(4), in that Respondent was convicted
24 of crimes substantially related to the qualifications, functions and/or duties of a licensed
25 vocational nurse. The circumstances are as follows:

26 15. On or about November 19, 2009, in the matter entitled *People of the State of*
27 *California vs. Bret Alan Barker*, Santa Clara Superior Court, San Martin Facility, Case No.
28 FF929291, Respondent was convicted by his plea of Nolo Contendere with regard to two

1 misdemeanor violations and priors of California Vehicle Code section 23152(a) (driving under
2 the influence of drugs) and to the misdemeanor violation of Business and Professions Code
3 section 4140 (possession of a hypodermic needle or syringe). On or about January 11, 2010, the
4 Court sentenced Respondent to 120 days in jail, to be served concurrently with his sentence in
5 Case No. FF929292. The Court granted Respondent 3 years of formal probation, ordered that his
6 driver's license be suspended, and that he submit to search and seizures

7 16. On or about November 19, 2009, in the matter entitled *People of the State of*
8 *California vs. Bret Alan Barker*, Santa Clara Superior Court, San Martin Facility, Case No.
9 FF929292, Respondent was convicted on his plea of Nolo Contendere with regard to two
10 misdemeanor violations and prior violations of California Vehicle Code section 23152(a) (driving
11 under the influence of drugs) and to the misdemeanor violation of Business and Professions Code
12 section 4140 (possession of a hypodermic needle or syringe). On or about January 11, 2010,
13 Respondent was sentenced by the Court to serve 120 days in jail, sentence suspended, to be
14 served concurrently with his sentence in Case No. FF929291. The Court granted Respondent 3
15 years of formal probation, ordered that his driver's license be suspended, that he submit to search
16 and testing, that he have no alcohol or drugs, submit to collection of specimens, samples and print
17 impressions pursuant to Penal Code section 296, and ordered him to pay fines and fees.

18 SECOND CAUSE FOR DISCIPLINE

19 (Unprofessional Conduct – Substantially Related Acts)

20 17. Respondent Bret Alan Barker's Vocational Nursing License is subject to discipline
21 under Code sections 2875, 2878(a), and 2878.5(b), pursuant to Code section 492 as defined in
22 Title 16, California Code of Regulations, section 2521, and pursuant to California Code of
23 Regulations, Title 16, section 2518.6(b)(4), in that Respondent committed acts substantially
24 related to the qualifications, functions and/or duties of a licensed vocational nurse. The
25 circumstances are as follows:

26 18. On or about December 20, 2008, officers from the California Highway Patrol (CHP),
27 were summoned to the scene of a roadway collision and crash. They found respondent
28 approximately 1 mile from the collision scene, passed out in the driver's seat of his car with the

1 keys in the ignition and the engine still running. The car sustained major front end damage. CHP
2 officers at the scene reported that Respondent woke up upon contact and described him as looking
3 at them with a blank stare. He had watery eyes and appeared confused. His speech was slow and
4 slurred. Officers observed an IV stint in respondent's left arm. Unopened medical supplies
5 consisting of gauze, tape, saline solution, alcohol swabs and sealed needles were noted on the
6 front passenger seat, front floor board, center console and back seat. An unopened and unlabeled
7 bottle of pills was located in the console. Respondent told the officers that he was a Registered
8 Nurse and that he practiced giving IV injections on himself. Based on his performance in field
9 sobriety tests, the officers determined that Respondent had been driving under the influence and
10 arrested him.

11 19. On or about March 7, 2009, at 0143 hours, CHP Officers were notified of a possibly
12 impaired driver traveling southbound on the freeway. Officers located the vehicle and pulled it
13 over for an enforcement stop. Officers contacted respondent who was the driver and requested to
14 see his license, registration and proof of insurance. Officers noted that Respondent seemed
15 lethargic and that his speech was slurred and drawn out. One of the officers noticed a medical
16 needle on the floorboard of the vehicle near the driver's side. When asked about the needle,
17 Respondent answered that the needle came from work. Respondent denied drinking alcohol prior
18 to driving and further denied having taken drugs that day. Respondent submitted to a series of
19 field sobriety tests. Based on Respondent's performance on the field sobriety tests and objective
20 signs of intoxication, Officers determined that Respondent was under the influence of drugs and
21 could not safely drive. Respondent was placed under arrest and subjected to a standing search.
22 During the search, officers found gloves wrapped around a needle along with dressing bandages
23 with blood on them. Respondent was then taken down to the Highway Patrol Office in Hollister
24 where he was evaluated by a CHP Drug Recognition Expert and subsequently booked for driving
25 under the influence and for unlawful possession of a hypodermic needle.

26 20. On or about March 13, 2009, at approximately 0046 hours, CHP Officers received
27 multiple calls to be on the lookout for a possible drunk driver traveling southbound on US 101.
28 The CHP officers located the vehicle and pulled it over for an enforcement stop. At the stop,

1 officers contacted respondent who was the driver of the vehicle. The CHP officers noted that
2 Respondent seemed confused, disoriented and had difficulty locating his license and other
3 information. Officers also noted that Respondent seemed lethargic and that his speech was
4 slurred. Based on his demeanor, the officers asked Respondent to perform a series of field
5 sobriety tests after which time Respondent was arrested for driving under the influence.

6 OTHER MATTERS

7 21. On or about May 13, 2001, in a criminal case before the California Superior Court,
8 Napa County, Case No. 105204, Respondent was convicted of the violation of California Vehicle
9 Code section 23152(a) (driving under the influence of drugs).

10 22. On or about July 26, 2001, in a criminal case before the California Superior Court,
11 Santa Clara County, Case No. FF196387, Respondent was convicted of the violation of California
12 Vehicle Code section 23152(a) (driving under the influence of drugs).

13 23. On or about October 19, 2006, the Board's representative sent a letter to Respondent
14 notifying him of the Board's concern with his past conviction history and advising him that the
15 Board would take disciplinary action against him should he engage in similar behavior or
16 otherwise violate the laws and/or regulations governing his practice as a vocational nurse.

17 PRAYER

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
19 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
20 issue a decision:

21 1. Revoking or suspending Vocational Nurse License Number VN 223609, issued to
22 Bret Alan Barker;

23 2. Ordering Bret Alan Barker to pay the Board of Vocational Nursing and Psychiatric
24 Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to
25 Business and Professions Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: December 23, 2010



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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